

REMARKS

The Office Action maintains the rejection to claims 10-18 under 35 USC 103(a) as unpatentable over Soumiya (U.S. Patent No. 5,583,857). The Examiner provides detailed remarks in *Response to Arguments* in paragraphs 1-4 of the Office Action. Responding to the Examiner's comments in paragraph 1, we respectfully disagree with the assertion that Applicant failed to address how "Soumiya fails to disclose the limitations set forth [sic] in the claims." Paragraphs 4-6, on page 3 of the amendment filed June 24, 2003 specifically detail our reasons. Nevertheless, we provide the following additional information for consideration by the Examiner.

While the instant invention calculates or estimates bandwidth with the aid of an acceptance algorithm, Soumiya pursues a different objective, according to which a new connection is or is not to be accepted. The acceptance algorithm used in the invention is referred to as a sigma rule algorithm, and is simply a criterion for calculation of bandwidths for a group of connections. The algorithm according to Soumiya only delivers a yes/no statement (namely whether the incoming call is accepted or rejected). In this regard, two different sets of problems are at issue.

Additionally, differences already exist between the two acceptance algorithms. Although the acceptance algorithm, according to Soumiya, also discloses a Connection Admission Control to reserve bandwidth, this is accomplished on the basis of a Peak Cell Rate and an Average Cell Rate of the new and already accepted connections. In contrast, the sigma rule algorithm of the instant invention reserves the bandwidth on the basis of the Peak Cell Rate (PCR) and a Sustainable Cell Rate (SCR). The term Sustainable Cell Rate (SCR) is understood as a permanently permitted cell rate, which represents the upper limit of a mean cell rate at which the cells are transmitted while a connection exists (see page 2, second paragraph of the specification, and the arguments set forth below in response to paragraph 2 of the Office Action). By definition, therefore, the term differs from the Average Cell Rate according to Soumiya, which only signifies a mean cell rate.

According to Soumiya, a connection is assigned to a Class I on the basis of the Peak Cell Rate (...each burst traffic call is classified into traffic classes on the basis of the Peak Cell Rate R_p ..., column 13, lines 13 and 14). In the case of the acceptance algorithm according to the

invention (sigma rule algorithm), however, a connection is assigned to a subclass S_x on the basis of its Peak Cell Rate **and** its Sustainable Cell Rate (...A subclass S_x is defined by a lower limit and/or upper limit of the peak cell rate PCR, as well as the relationship of the transmission parameters SCR/PCR..., page 5, lines 1-7 of the American specification).

In paragraph 2 of the Office Action, the Examiner asserts his reasoning on the term “sustainable cell rate.” Simply stated, the Examiner interprets this phrase as “a cell rate that indicates the flow of information over a long period of time for a particular stream” since this is the bandwidth necessary for an information flow without burst properties to be sustained, citing Soumiya at col. 5. Under this interpretation, the Examiner posits that “an average cell rate is a sustainable cell rate. In addition, although Applicant defines the SCR in the specification as ‘the upper limit for an average cell rate with which the cells are transmitted during the existence of the connection’ (page 2, lines 16-18), limitations from the specification are not read into the claims.” While the Examiner is generally correct in stating that limitations may not be read into the claims, he fails to note that the interpretation must also be reasonable. Where, as here, the patentee has defined a term in the specification, the definition is controlling and is the broadest reasonable interpretation. Hence, we respectfully disagree with the Examiner’s broad interpretation, and submit that the term SCR is properly defined in the instant specification. See, for example, *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, stating that “the specification is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.”

The Examiner, in paragraph 3, asserts that the “effective bandwidth” is not limited by the terms/phrases “material constant C” and the “maximum possible load on the line” since they are not recited in the claims. Again, we respectfully disagree with the Examiner. The “effective bandwidth” is defined in the specification as requiring these terms/phrases. Hence, one must interpret the effective bandwidth accordingly.

The Examiner also remarks, in paragraph 4, that he has not made conclusory statements of obviousness. We, again, respectfully disagree with the Examiner. Given the Federal Circuit’s

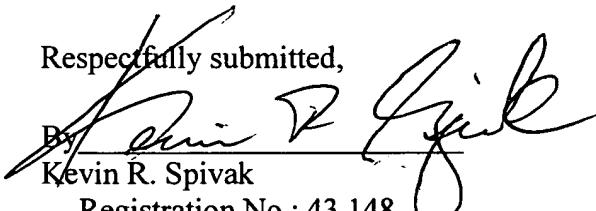
decision in *In re Sang Su Lee*, the Examiner may not conclude, but rather must provide, evidence on the record to support his findings of obviousness. The Examiner, as detailed in the remarks, appears to be relying on knowledge of the skilled artisan and/or that which is inherent in the reference, without providing any support.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 449122037100. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,


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